

Board	Author	Bill Number
California Integrated Waste Management Board	Migden	AB 1799
Sponsor	Related Bills	Date Amended
City and County of San Francisco	SB 1018 (Leslie) SB 1330 (Lockyer)	March 16, 1998

### BILL SUMMARY

AB 1799 would increase fines and penalties in the State Penal Code for unlawful dumping of solid waste matter.

### BACKGROUND

The author is carrying this bill at the request of the City and County of San Francisco which reported that their jurisdictions, along with many other local government agencies around the state and the country, cannot keep pace with the growing incidents and volume of illegally dumped materials

According to the author, "Large quantities of garbage, particularly commercial quantities of roofing material and large household items, are being dumped on the sidewalks of our neighborhoods and on the roadsides of our rural communities. These items pose a significant health and safety threat to our communities and cause preventable deterioration to our neighborhoods and scenic landscapes. Fines and punishment for these activities must be strong in order to deter such dumping. AB 1799 will force would-be violators to think twice before treating our neighborhoods like dumpsters."

### RELATED BILLS

SB 1018 (Leslie) of 1997 would have amended the Civil Code to relieve private property owners of liability for the cost of cleanup, or of any duty to provide such cleanup, in any case involving illegal dumping or littering of waste material on private property located adjacent to a public road, highway, or right-of-way with the consent of the private property owner. The measure died in the Senate Judiciary Committee without being heard. The CIWMB did not take a position on SB 1018.

Departments That May Be Affected		
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Chapter 875, Statutes of 1997, (SB 1330 Lockyer), requires the California Integrated Waste Management Board to establish, on or before January 1, 1999, a grant program for cities and counties for purposes of cleaning up and abating illegally disposed of solid waste on farm or ranch property. The CIWMB took a "support" position on SB 1330.

Chapter 737, Statutes of 1994, (SB 1450 Hughes), established the definition, penalties and fines for dumping "commercial quantities" of waste matter by an individual or business. The CIWMB took a "support" position on SB 1450.

## EXISTING LAW

### Current law:

1. Prohibits any person from dumping or causing to be dumped any waste matter, including rocks or dirt, in or upon any public or private highway or road, without the consent of the owner, or in or upon any public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property. Each day that waste remains in violation of this section is a separate infraction, punishable by:
  - a. Mandatory fines of \$100 to \$1,000 for the first conviction; \$500 to \$1,000 for the second conviction; and \$750 to \$1,000 for the third or subsequent conviction. Fines shall be doubled if the waste matter dumped was used tires.
  - b. Penalties:
    - i. The court may require, in addition to any fine, as a condition of probation, the offender to remove or pay the cost of removing any waste matter the offender dumped or caused to be dumped on public or private property.
    - ii. Except when the court requires the convicted person to remove waste matter which he or she is responsible for dumping, the court may require as a condition of probation, in addition to any other condition of probation, that the person pick up waste matter at a time and place within the jurisdiction of the court for not less than eight hours. (Penal Code Section 374.3)
2. Defines "commercial quantities" as an amount of waste matter generated in the course of a trade, business, profession, or occupation, which does not apply to the dumping of household waste at a person's residence. (Penal Code Section 374.3)
3. States that dumping of commercial quantities is a misdemeanor, punishable by imprisonment in a county jail for not more than six months and a mandatory trebled fine as follows:
  - a. First conviction: When trebled, not less than \$300 nor more than \$1,000.
  - b. Second conviction: When trebled, not less than \$1,500 nor more than \$3,000.

- c. Third or subsequent conviction: When trebled, not less than \$2,250 nor more than \$3,000. (Penal Code Section 374.3)
4. Prohibits any person from maliciously discharging, dumping, releasing, or otherwise depositing; to maliciously cause to be discharged, dumped, released or otherwise deposited any substance capable of causing substantial damage or harm to the operation of a public sewer sanitary facility; or to deposit in commercial quantities any substance, into a manhole, cleanout, or other sanitary sewer facility, not intended for use as a point of deposit for sewage without written authorization. (Penal Code Section 374.2.)
  5. Prohibits any person from littering or causing objects or substances to be littered in or upon any public or private property. (Penal Code Section 374.4.)
  6. Prohibits any person from littering or dumping any waste matter into any body of water, or bank, beach, or shore within 150 feet of the high water mark of any stream or body of water. (Penal Code Section 374.7.)
  7. Prohibits any person from depositing any hazardous substance into or upon any road, street, highway, alley, or railroad right-of-way, or upon the land of another, without permission of the owner, or into the waters of the state. (Penal Code Section 374.8.)
  8. Establishes specific penalties for each violation of #4-7 above, including fines, imprisonment in county jail, and community service.

## ANALYSIS

AB 1799 would:

1. Increase the penalties for dumping or causing to be dumped any waste matter in or upon any public or private highway or road, specified private property, or in or upon any public park or public property other than property designated for that purpose, an infraction, as follows:
  - a) Increases the mandatory minimum fine upon first conviction from \$100 to \$250.
  - b) Increases the mandatory maximum fine upon third or subsequent conviction from \$1,000 to \$2,500.
2. Increase the number of hours that a court may order a defendant to pick up waste matter as a condition of probation from 8 to 12.
3. Add to the definition of commercial quantities of waste matter to include "any amount equal to or in excess of one cubic yard."
4. Increase the penalties for dumping commercial quantities of waste matter, a misdemeanor, as follows:

- a) Mandatory fine, when trebled, of not less than \$500 nor more than one \$1,500 upon a first conviction (instead of \$300 to \$1,000.)
- b) Mandatory fine, when trebled, of not less than \$2,750 nor more than \$4,000 upon a third or subsequent conviction (instead of \$2,250 to \$3,000.)

## COMMENTS

CIWMB-Funded Cleanups of Disposal Sites. Potentially, AB 1799 could reduce the future need for CIWMB-funded cleanups of illegal disposal sites due to greater enforcement and deterrence. The CIWMB's Solid Waste Disposal and Codisposal Cleanup Program, created by Chapter 655, Statutes of 1993 (AB 2136 Eastin), was enacted to remediate solid waste at sites where cleanup is needed to protect public health and safety and the environment and where the responsible party either cannot be identified or is unable or unwilling to pay for timely remediation. The CIWMB approved guidelines for cleanup of sites through matching grants to local governments, loans to responsible parties and local governments, grants to local enforcement agencies (LEAs), and direct site cleanups using CIWMB-managed contracts. Since inception of the program, the CIWMB has approved \$5,135,000 for CIWMB-managed remediation of 29 illegal disposal sites and \$2,296,000 for LEA grants to clean up multiple illegal disposal sites within their jurisdictions.

Definition of "Commercial Quantities." This bill further clarifies the definition of "commercial quantities" of waste matter. The current definition, "an amount of waste matter generated in the course of a trade, business, profession, or occupation" could refer to one bag or one ton of waste, depending on the trade, business, etc. According to the author, "an amount equal to or in excess of one cubic yard" equates to approximately eight 33-gallon trash bags or about 500 pounds (depending on the contents), and, as written, applies equally to individuals and businesses. However, it should be noted, pursuant to this subdivision, that the quantity restriction does not apply to household waste left by a property owner at his or her residence.

Scope of the Problem. A March 1997 article in the San Francisco Chronicle reported illegal dumping statistics from several California cities and counties:

--San Francisco's city public works crews picked up 40,000 tons of junk, or the equivalent of 4,000 truck loads, illegally dumped by residents and businesses, at a cost of \$16 million. This included 8,000 tons of heavy debris such as refrigerators, furniture and roofing materials.

--Sacramento spends \$500,000 per year cleaning up illegally dumped materials.

--Oakland picks up 1,500 cubic yards of couches, mattresses and other debris every month.

--Mendocino County spends \$50,000 annually for cleanup, and received a grant from the state of \$500,000 toward further cleanup efforts.

--Riverside County officials estimate that they have more than 200 unauthorized dump sites of varying sizes and that only the largest 30 sites are being cleaned up with the \$275,000 in funding provided by the California Integrated Waste Management Board (CIWMB).

Causes and Enforcement Issues. A combination of factors are responsible for the increasing number of illegal dump sites, the cost of cleaning them up, and the ability of local agencies to prevent repeat violations:

--There are statewide approximately 590 permitted, active solid waste facilities in California, and about 90% of those facilities are accessible to the public for depositing solid waste. Offenders not wanting to travel to the nearest facility simply dump the waste illegally. This is often cited as a critical problem in areas (both urban and rural) such as San Francisco, where there are no landfills located within city limits. Five counties were surveyed for the number and type of facilities available:

County	Landfills	Transfer Stations	MRF/TS*
San Francisco	0	1	0
Riverside	7	2	1
Mendocino	3	5	0
Los Angeles	11	6	3
San Diego	6	11	0

\*Material Recovery Facility/Transfer Station

--The cost of depositing waste at authorized sites varies considerably statewide and are determined by factors that include the type and weight of the materials, the category of waste facility, and whether or not the material is compacted. Officials cite high fees, particularly for commercial waste loads that tend to be heavier in weight, as a reason given by offenders for not using authorized sites. The following average fees are from the CIWMB's December 1997 survey of tipping fees for selected facilities or all facilities in specific counties:

Facility/County	FEE PER TON		FEE PER CUBIC YARD	
	Comp*	NonC+	Comp*	NonC+
San Francisco Transfer/Recycle Center	----	\$60.13	----	----
Riverside County	\$28.11	\$28.75	----	----
Mendocino County	\$68.25	\$64.50	\$29.75	\$15.00
Los Angeles County	\$35.91	\$32.40	\$10.00	\$10.00
San Diego County	\$37.53	\$37.60	----	----

\*Compacted +Noncompacted

STATEWIDE	FEE PER TON		FEE PER CUBIC YARD	
	Comp*	NonC+	Comp*	NonC+
Lowest	\$ 3.50	\$ 2.14	\$ 3.50	\$ 1.00
Highest	\$83.00	\$37.90	\$85.30	\$20.00
Median	\$36.00	\$ 7.45	\$33.00	\$ 7.45
Average	\$39.12	\$11.54	\$38.26	\$ 9.43
Weighted Average (Landfills Only)	\$32.82	\$12.27	\$28.01	\$10.52
Weighted Average (All Facilities)	\$34.41	\$12.15	\$29.82	\$10.29

\*Compacted +Noncompacted

--The average weight of loads delivered to waste management facilities generally varies depending on the type of vehicle delivering the waste. As reported by the Riverside County Waste Resources Management District, weights of average loads delivered to landfills in Riverside County include 0.06 tons for cars or station wagons (noncompacted); 0.25 tons for vans, pickups, or two-wheel trailers (noncompacted); 9.25 tons for an 18-wheel tractor/trailer (noncompacted); 8.28 tons for a front-end loader, commercial waste hauler (compacted); 4 tons for a rolloff/truck commercial waste hauler (noncompacted); 5.44 tons for rolloff/truck commercial waste hauler (compacted); and 6.24 tons for rear/side commercial waste hauler (compacted).

--Typical fines for citations issued range between \$75 and \$135, or lower; low enough, officials contend, to cause violators to ignore or simply pay the citations instead of paying the cost of travel and fees at local dumps. Due to the various court record-keeping systems, it is difficult for counties to establish exactly how many offenders are dumping or patterns of repeat offenders.

--Riverside and San Francisco County officials point to the difficulty in apprehending and citing individuals or corporations which are illegally dumping materials during the night and in isolated areas. Riverside County Building and Safety's weekly patrols in Fiscal Year 1996/97 netted only 50 tickets for violations.

--Several jurisdictions report that they attempt to make the public aware of local and state statutes regarding unlawful dumping in an effort to deter these activities. Local programs include recycling education fairs, offers to waive fees at waste facilities, free pickup of heavy, discarded objects or materials, inserts in refuse bills, and school programs.

--Enforcement actions against the owner or tenant of any premises, business establishment or industry for incidents of nuisance dumping may be dealt with under the California Code of Regulations, Title 14, Division 7, Chapter 3, Article 5, Section 17331 (Frequency of Refuse Removal – removal required after seven days, except under specific circumstances). In addition, local codes or ordinances or Penal Code Section 374 et seq. may be available to deal with

incidents of nuisance dumping. The local district attorney should be contacted to determine the appropriateness and applicability of prosecution under the Penal Code in such incidents.

--Absent data on who the offenders are, where the materials originate and proximity to authorized dump sites, local governments cannot conclusively determine why appropriate landfill and recycle facilities are not being used.

## **LEGISLATIVE HISTORY**

AB 1799 was introduced on February 10, 1998. It passed the Assembly Public Safety Committee (6-0) on March 24, 1998, the Assembly Floor (78-0) on March 30, 1998, and is currently in the Senate Rules Committee awaiting assignment to policy committee.

Support:       City and County of San Francisco  
                  Norcal Waste Systems, Inc.  
                  Planning and Conservation League  
                  California Conference of Directors of Environmental Health  
                  Bayview/Hunters Point Business and Merchants Association  
                  Southeast Alliance for Environmental Justice  
                  Riverside County  
                  Mendocino County  
                  El Dorado County  
                  San Francisco Clean Coalition

Supporters argue that the increased fines and community service hours and specified quantity of commercial waste will serve as a deterrent to those individuals and businesses that continually dump solid waste products and encourage these violators to use appropriate waste facilities. In addition, the penalties will serve as an incentive to local governments to vigorously enforce cleanup and dumping ordinances.

Opposition:   None on file

## **FISCAL AND ECONOMIC IMPACT**

To the extent that AB 1799 results in increased enforcement and deterrence, requests for CIWMB-funded cleanups of illegal disposal sites would likely decline. Any reduction in expenditures for CIWMB-funded cleanups of illegal disposal sites would likely permit the CIWMB to fund other high priority cleanup projects.





Board	Author	Bill Number
California Integrated Waste Management Board	Bowen	AB 2432
Sponsor	Related Bills	Date Amended
Author		As Introduced

## BILL SUMMARY

AB 2432 would provide, on or before January 1, 2001, that the Department of General Services (DGS) require all bids submitted for construction or renovation of State Buildings to include specified provisions regarding energy efficiency, the use of recycled materials and the conservation of public resources.

## BACKGROUND

According to the author, private contractors and developers may be hesitant to use certain "green" materials or "green" building methods because they are unfamiliar with the material or believe the material is untested. The author believes that by calling on the State to lead the way in "green" building (via AB 2432), the State will provide a taxpayer benefit through more inexpensively operated State buildings and would simultaneously help to develop markets for recycled, recyclable and environmentally friendly materials.

Definition of a "Green" Building. According to the United States Environmental Protection Agency (U.S. EPA), a "green" building is a building that is "environmentally friendly." It has been designed to reduce both the direct and indirect environmental consequences associated with its construction, occupancy, operation, maintenance and eventual decommissioning. The construction and/or renovation of "green" buildings, can include, but is not limited to, the following elements:

- Use of certified sustainable wood products.
- Aggressive use of high recycled-content products.

Departments That May Be Affected		
California Environmental Protection Agency, Department of Conservation, Department of General Services, State Department of Education and Department of Health Services		
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- Installation of recyclable carpet, high efficiency lights and CFC-free air conditioning equipment.
- Separation and recycling of building material waste that occurs during construction.
- Use of construction materials that are non-carcinogenic and minimally toxic.
- Modification of heating, ventilation and air conditioning systems (HVAC) to provide high quality indoor air.
- Selection of construction materials made of substantial recycled content.
- Installation of high performance anti-solar window film.
- Installation of photovoltaic (PV) cells for supplemental energy production.

CIWMB Recommendations Regarding the Construction of the Cal/EPA Building. In an October 1997, memo to Cal/EPA regarding the construction of the Cal/EPA building, the CIWMB suggested that Cal/EPA form a "green" building design team, which would serve in a technical advisory capacity and would identify and evaluate practical opportunities to incorporate "green" building strategies through an integrated design approach. CIWMB suggested the "green" team should include the following persons with expertise in the following backgrounds:

- A mechanical engineer with knowledge of HVAC systems for high rise buildings. The desired technical skill is the ability to select the appropriate system using an integrated design approach.
- An energy conservation consultant with knowledge of lighting design, energy efficient light systems, light controls, recycled-content insulation materials, and computer software modeling (for projecting heating/cooling loads).
- A person with expertise in writing building product specifications for environmentally friendly products, including recycled-content building products.

The CIWMB recently looked at becoming involved in administering a contract to explore "green" options (interior use of recycled-content products) for the new Cal/EPA building and voted to authorize \$150,000 for this purpose at its February 11, 1998 meeting. However, this contract has since been assigned to DGS for exclusive responsibility with the necessary funding being provided as follows: 1/2 or \$75,000 from the Department of Water Resources and \$75,000 from project bond funds.

DGS Responsibilities. AB 2432 would require DGS to adopt regulations that require all bids submitted for State building construction or remodeling to include energy efficient provisions. These provisions, in part, will address the use of recyclable materials and energy conservation

efforts. The regulations are to be adopted on or before July 15, 1999. It is possible that DGS will look to the CIWMB for guidance in drafting the regulations. This may entail entering into an Interagency Agreement with DGS, and thereby, increasing our reimbursement authority.

Diversion Requirements. Chapter 1095, Statutes of 1989 (The California Integrated Waste Management Act of 1989, Sher, AB 939) requires local governments to reduce their waste streams by 25 percent and eventually 50 percent by the year 2000 through the development of waste diversion programs. State facilities are required by Executive Order and statute to initiate activities for the collection, separation, and recycling of recyclable materials. As we approach the date for local governments to meet the goals of Chapter 1095, it will become increasingly important for State agencies to do all that they can to help local governments attain this goal.

1990 Recycling Plan. Under the 1990 Recycling Plan developed by DGS and the CIWMB, responsibilities for implementing recycling programs were determined. The plan stated that DGS would, among other duties, collect all recyclable materials at secondary containers and deliver them to the dock level for pickup by contract vendors. This only applied to the State-owned buildings operated by DGS. Many State-owned facilities are not operated by DGS and are not subject to this plan. Therefore, there is no requirement to collect these materials at these facilities and deliver them to dock level recycling containers. When DGS is not the property manager for a State-owned building, the property management is contracted out. DGS requires the property manager to collect recyclables, but the contract language is somewhat vague and may not guarantee that the recyclables are collected.

Project Recycle. The CIWMB initiates and coordinates a comprehensive statewide waste reduction and recycling program for all State offices and institutions. The Project Recycle program conducts evaluations of materials discarded by State agencies; provides training materials and instruction, as well as desktop and intermediate metal collection containers; purchases other equipment for the safe collection of recyclables; and assists with arrangements for the sale of collected materials. As of March 1997, Project Recycle works with programs at 1150 State offices and facilities. During 1997, 31,000 tons of materials were collected from State facilities and the CIWMB received \$218,873.06 from all recycling activity. This represents a net of approximately \$18,000.

Buy Recycled Campaign. The CIWMB's Buy Recycled Campaign assists procurement officers at the DGS, other State agencies, local governments and businesses in buying recycled-content products. These include recycled-content paper and plastics, re-refined petroleum, retreaded tires, lead-acid batteries, paint and solvents, glass products, paving materials, and compost products.

Administrative State Agency Recycling Directives. Governor Wilson's April 10, 1991 Executive Order W-7-91 requires all State agencies to implement a number of specific practices to reduce waste, reuse materials, recycle, and procure products made with recycled content to help reduce the amount of solid waste going to landfills. The CIWMB and the Department of Conservation (DOC) were also directed to conduct five waste audits at State agencies to determine waste

reduction opportunities. The DGS is required to develop policies and guidelines for implementing the Executive Order and conduct ongoing educational and training sessions for State agencies, postsecondary education institutions, and local government procurement offices.

In June 1991, an Executive Task Force on Waste Reduction and Recycling was formed to implement the Executive Order. In January 1992, the Task Force sent an advisory report to the Governor detailing existing problems and making recommendations to solve these problems.

## **EXISTING LAW**

### State law:

1. Requires all new public buildings to be models of energy efficiency and to be designed, constructed, and equipped with all energy efficiency measures, materials, and devices that are feasible and cost-effective over the life of the building (Health and Safety Code §18901 et seq.); and
2. Requires all public buildings, when renovated or remodeled, to be retrofitted to meet specified building standards (Government Code §8878.55); and
3. Requires State agencies to initiate activities for the collection, separation, and recycling of recyclable materials (Public Contract Code [PCC] §12159.

### State regulations (California Code of Regulations):

1. Provide State building standards that mandate energy efficiency measures in new construction (Title 24, Part 6, California Energy Efficiency Standards for Residential and Nonresidential Buildings).

### State Executive Order W-7-91:

1. Requires State agencies to implement a number of specific practices to reduce waste, reuse materials, recycle, and procure products made with recycled content to help reduce the amount of solid waste going to landfills
2. Requires the CIWMB and the DOC to conduct five waste audits at State agencies to determine waste reduction opportunities; and
3. Requires DGS to develop policies and guidelines for implementing the Executive Order and conduct ongoing educational and training sessions for State agencies, postsecondary education institutions, and local government procurement offices.

## ANALYSIS

### AB 2432 would:

1. Provide that the DGS require all bids submitted for the construction or renovation of State buildings that are used, in whole or in part, for State offices and are constructed by the State or in conjunction with any local or Federal agency, government, or department, to include specified provision regarding energy efficiency, the use of recycled materials, and the conservation of public resources by January 1, 2000; and
2. Require DGS to adopt appropriate regulations on or before July 15, 1999, to implement these provisions.

## COMMENTS

Use of Recycled Materials in Construction and Renovation of State Buildings. The CIWMB believes that State agencies should lead by example and should do their fair share to contribute to the State's source reduction and recycling efforts in order to meet the State-mandated goal of 50 percent disposal reduction by the year 2000. One of the critical keys to reach this goal is to develop markets for materials that have been diverted from solid waste landfills. By requiring State agencies to use recycled-content materials when constructing or renovating State buildings, AB 2432 would create new markets for building and construction materials, outdoor and indoor furnishings, and landscaped materials composed of recycled-content materials as well as set an example for the construction of non-State buildings.

New State California Environmental Protection Agency (Cal/EPA) Building. The DGS is overseeing the construction of the new Cal/EPA headquarters. The proposed 25-story, 950,000 square foot building will serve primarily as the headquarters building for the Cal/EPA, although other State agencies will lease space as well. Approximately 3,500 people will be housed in the 765,000 square feet of usable space. The building will allow Cal/EPA to consolidate its workforce and thus improve its effectiveness, efficiency, and communication in its efforts on behalf of taxpayers and the environment.

According to Cal/EPA, "green" issues are an important component of planning for the Cal/EPA building. The lease agreement specifies that the conservation of energy resources and the economically viable use of recycled materials are prime considerations in the development of this project. Examples of "green" issues include an efficient HVAC system, inclusion of dual pane windows, and a loading dock designed to accommodate significant recycling. During the tenant improvement phase, additional features are expected to include building materials that are low emitting or recycled, a design that increases the utilization of natural daylight, conserves resources, and improves air quality. The building design team anticipates that the building will exceed Title 24 regulations (California Code of Regulations) for energy efficiency requirements by at least 36 percent.

Possible Parking Problems at New Cal/EPA Building. The tenants of the proposed building will require about 1,885 parking spaces. As part of this project's lease agreement, the City of Sacramento (City) has contracted to provide 750 spaces from its parking garage, located across the street from the proposed building. The City will also provide 550 additional spaces within a five-block radius of the proposed building. It is anticipated that the difference will be made up through other parking available within the downtown area. Beyond this, the project includes the development of a comprehensive transportation management plan, which will include encouraging and facilitating the use of alternative modes of transportation by employees.

According to City of Sacramento staff, testimony during the Sacramento City Council meeting of March 24, 1998 indicated that there clearly were not enough parking spaces available for employees of and visitors to the proposed Cal/EPA building. When excess capacity is subtracted from the demand for parking places, the outcome is a deficient number of parking spaces. Based on our understanding, there would be a minimum of 585 deficient parking spaces. Further, alternative modes of transportation would not be readily available for employees of and visitors to the proposed Cal/EPA building. Light Rail would provide some benefit as a stop exists within a block of the building. In addition, the City has indicated that they could arrange for shuttle buses to stop in front of the building to move employees to and from parking lots that are a considerable distance from the building.

Other Pending State Building Construction. Construction on the East End Complex (Complex) is scheduled to begin in 1999. The Complex will be located in an area bounded by L, O, 14<sup>th</sup>, and 17<sup>th</sup> Streets. The Complex will house DGS, the Department of Education, the Department of Health and Human Services and other State agencies in 1.5 million square feet of office space (more than three times the size of the Wells Fargo bank towers).

Other Examples of "Green" Office Buildings. Building "green" office buildings is not a new concept. Other examples of "green" office buildings include:

- The U.S. EPA is building a state-of-the-art facility in North Carolina at Triangle Research Park that will house the U.S. EPA offices and serve as a "green" building showcase for technologies. The total cost of this facility is \$232 million; the 500,000 square foot building will house more than 2,000 U.S. EPA employees and contractors, as well as extensive environmental science laboratories. "Green" building methods integrated into the U.S. EPA's facility will include:
  - Using certified sustainable wood products;
  - Aggressive use of high recycled-content products;
  - Installation of recyclable carpet, high efficiency lights and CFC-free air conditioning equipment; and
  - Separation and recycling of building material waste that occurs during construction.

According to the U.S. EPA, any increased costs in building materials and practices will be more than offset by savings from decreased utility usage and redesigned offices and labs that use less construction materials.

- The City of San Diego recently completed a "green" remodel for their Environmental Services Department (the "Greenhaven at Ridgehaven" building). "Green" methods used in this building include:
  - Using construction materials that are non-carcinogenic and minimally toxic;
  - Modification of heating, ventilation and air conditioning systems to provide high quality indoor air;
  - Selection of construction materials made of substantial recycled content; and
  - Installation of high performance anti-solar window film.

"Green" Office Buildings Savings. The CIWMB Model Green Projects program encourages businesses, by example, to establish complete waste reduction and buy-recycling systems in office buildings or office parks. The CIWMB has found that there can be substantial cost savings when waste reduction programs are implemented in "green" buildings. They suggest that one way to do this would be to maximize the recycling and the reuse of construction and demolition materials generated during the construction of new State office buildings and reuse of construction and demolition materials generated during the demolition of existing structures.

Bid Requirements. AB 2432 would require DGS to ensure that all bids submitted after January 1, 2000 for the construction and renovation of State office buildings include various provisions for specific "green" building elements. A number of bid provisions related to energy efficiency and conservation of resources are specified in AB 2432. CIWMB programs may benefit because construction and demolition waste reduction, and construction and demolition recycling could be addressed in bid documents. The bid documents would also require provisions for the use of recycled and/or recyclable building materials for applicable construction and renovation projects. Finally, AB 2432 would require that building design include provisions for recycling activities which will occur during the operation of the building (office paper, beverage containers, etc.). However, AB 2432 is limited in that it does not establish new performance standards or modify existing performance standards for State buildings.

Energy Costs. AB 2432 would require DGS to consider only the long-term estimate of energy costs when calculating the lowest bid for a given project. This will promote energy conservation and produce energy cost savings in operating the building. However, the life cycle approach appears to be limited to the area of energy savings only. The determination of low bid based on life cycle analysis does not extend to projected savings in operational costs, which are not energy-related. Therefore, AB 2432 does not promote certain value-added design strategies, design elements or the use of certain advanced construction products that may reduce long-term

maintenance costs, reduce occupant health costs, and even reduce the cost of renovating the building in the future.

Recycled-Content Building Products. AB 2432 would require the use of recycled-content building products. The author should instead consider the use of recycled-content materials that meet the standards of building codes and are available at competitive life cycle cost in the marketplace.

Storage and Collection of Recyclable Materials. AB 2432 would, among other things, require DGS to require all bids submitted for the construction or renovation of State buildings that are used, in whole or in part, for State offices and constructed by the State to include storage and collection of recyclable materials used by building occupants, including storage and collection of beverage containers, aluminum, paper, and other materials.

This would be a great benefit to the CIWMB's Project Recycle program, which is required by statute to implement recycling programs at State facilities. The CIWMB provides indoor recycling containers to State offices, but in many State facilities, it is difficult to assure that the recyclables are collected from the indoor recycling bins and taken to outside collection bins. It is extremely labor intensive and expensive for a recycler to collect the recyclables from many indoor bins and much more efficient and less costly to collect the recyclables from a large outdoor bin. If the property management company is already collecting garbage from inside the building, it is not an undue burden to have them collect recyclables. If the recyclables were not collected separately, the property management would collect them in the garbage bins anyway. One way or the other they would be hauling the material to outdoor bins. By hauling the materials to separate outdoor collection bins, the collection of the recyclables is much more attractive to a recycler to collect. Therefore, AB 2432 could greatly assist the collection of recyclables from State -owned facilities.

According to the Office of Real Estate and Design Services, there are 1,470 State-leased offices in addition to State-owned facilities. Some of these leased offices have a large number of employees generating recyclable materials. At most of these leased offices, the property management is not required to collect recyclables and take them to outdoor recycling bins. Therefore, the materials from these State facilities may not be recycled. It would be very helpful to the State's recycling program, if AB 2431 were to include the collection and storage of office paper and beverage containers in leased facilities.

## **SUGGESTED AMENDMENTS**

The LPEC may wish to consider the following amendments:

1. Instead of requiring the use of recycled-content building products, require the use of recycled-content materials that meet the standards of building codes and that are available at competitive life cycle cost in the marketplace; and



2. Expand the State's recycling program to include the collection and storage of office paper and beverage containers in State-leased facilities.

### **LEGISLATIVE HISTORY**

AB 2432 was introduced on February 20, 1998. The bill is set to be heard before the Assembly Consumer Protection, Governmental Efficiency and Economic Development Committee on April 21, 1998.

Support: American Institute of Architects, California Council

Oppose: None on file.

### **FISCAL AND ECONOMIC IMPACT**

AB 2432 would have minimal fiscal impact on the CIWMB.

Since AB 2432 does not include a provision to give a price preference to recycled content construction materials, there would be no additional cost to the CIWMB because of this legislation.

AB 2432 would require DGS to adopt regulations that require all bids submitted for State building construction or remodeling to include energy efficient provisions. These provisions, in part, will address the use of recyclable materials and energy conservation efforts. While the result of this strategy will generate annual savings for the future building tenants, the actual savings amount will be dependent on the buildings' final design criteria and future energy costs. Therefore, we are presently unable to estimate the amount of savings anticipated from this approach. The regulations are to be adopted on or before July 15, 1999. It is possible that DGS will look to the CIWMB for guidance in drafting the regulations. This may entail entering into an Interagency Agreement with DGS, and thereby, increasing our reimbursement authority.

Another possible fiscal impact on the CIWMB would be the cost of providing recycling containers for new State facilities. However, the CIWMB receives revenue from the sale of recyclables to purchase the recycling containers. If the amount of recyclables collected increased, the CIWMB would receive increased revenue thereby offsetting the cost of additional bins. During 1997, 31,000 tons of materials were collected from State facilities and the CIWMB received \$218,873.06 from all recycling activity.



Board	Author	Bill Number
California Integrated Waste Management Board	Cardoza	AB 2531
Sponsor	Related Bills	Date Amended
Stanislaus County	SB 878 (Karnette)	As Introduced

**BILL SUMMARY:**

AB 2531 would provide that up to 25% of the 50% diversion requirement may include transformation at the City of Commerce, City of Long Beach, or the County of Stanislaus transformation facilities, for cities, counties, or regional agencies that used these facilities on or before January 1, 1998.

**BACKGROUND:**

In the 1980's prior to passage of the Integrated Waste Management Act (Act), Chapter 1095, Statutes of 1989 (AB 939, Sher), Legislature and the then-California Waste Management Board encouraged the construction of transformation facilities as an alternative to landfill disposal. During this period, numerous jurisdictions made long-term investments in this technology. AB 2531 recognizes this history and attempts to compensate for the change in direction with the passage of the Act.

Chapter 1095 brought about a significant change by promoting a waste management hierarchy of source reduction, recycling and composting, and environmentally safe transformation and environmentally safe land disposal. The Act further requires cities, counties and regional agencies to divert 25% of all solid waste from landfill disposal or transformation by 1995 and 50% by 2000.

Current law allows for a 10% credit for transformation toward the 50% requirement in 2000. Any amount in excess of that is disposal. Since 1990, all of the subsequent amendments to Chapter 1095 (AB 939) have retained this basic framework for transformation. The CIWMB's regulations, local jurisdiction planning documents, and the diversion programs selected by local jurisdictions all reflect and are consistent with this view of transformation.

Departments That May Be Affected		
Committee Recommendation	Committee Chair	Date
		3-20

## RELATED BILLS

SB 878 (Karnette) of 1997 would authorize a city, county, or regional agency to submit to the California Integrated Waste Management Board (CIWMB) a revised Source Reduction and Recycling Element (SRRE) that includes diversion credit through waste that is converted to energy. This credit would be applicable to the 50% diversion requirement if specified conditions are met, including that the waste to energy credit results from utilization of only the facilities in the City of Commerce, City of Long Beach, and the County of Stanislaus, as permitted by the CIWMB and operational on or before January 1, 1990. SB 878, which has an urgency clause, is currently in the Senate Environmental Quality Committee with no hearing date set. According to the author's office, there are no plans to move SB 878 at this time. The CIWMB has not taken a position on SB 878.

AB 2706 (Cannella) of 1996 would have defined: (1) "energy recovery" to provide for energy recovery in lieu of transformation, and would have included, as an authorized waste management practice with a higher priority than landfill disposal, environmentally safe energy recovery at the discretion of the local jurisdiction, to further reduce the amount of waste disposal in landfills; and (2) would have defined energy recovery facilities for purposes of the bill to include only the City of Commerce, City of Long Beach, and Stanislaus County transformation facilities permitted by the CIWMB as of January 1, 1990. AB 2706 died on the Senate Appropriations Committee Suspense File. The CIWMB took no position on AB 2706.

## EXISTING LAW

### State Law:

1. Requires the CIWMB and local agencies to promote the following waste management practices in order of priority: (a) source reduction, (b) recycling and composting, and (c) environmentally safe transformation and environmentally safe land disposal. (PRC § 40051)
2. Requires each city and county source reduction and recycling element (SRRE) to include an implementation schedule which shows how the jurisdiction will divert 25% of all solid waste from landfill disposal by January 1, 1995, through source reduction, recycling, and composting activities, and 50% by 2000. (PRC § 41780)
3. For any city, county, or regional agency SRRE submitted to the CIWMB after January 1, 1995, allows the 50% diversion requirement to include not more than 10% through transformation, if all of the following conditions are met:
  - a. The transformation project is in compliance with the California Environmental Quality Act (CEQA), has required air permits, and has a Solid Waste Facilities Permit (SWFP).
  - b. The transformation project uses front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation (to the maximum extent feasible).

- c. Ash or other residue from the transformation project is tested routinely.
- d. The CIWMB holds a public hearing in the jurisdiction where the transformation project is proposed, and makes both of the following findings: (1) the jurisdiction is and will continue to be effectively implementing all feasible source reduction, recycling and composting measures; and (2) the transformation project will not adversely affect public health and safety or the environment.
- e. The transformation facility is permitted and operational on or before January 1, 1995.
- f. The city, county or regional agency does not include biomass conversion in its SRRE. (PRC § 41783)

## ANALYSIS

AB 2531 would:

1. State that if transformation takes place at the City of Commerce, City of Long Beach, or Stanislaus County transformation facility, the 50% by 2000 diversion requirement may include up to 25% through transformation for any city, county, or regional agency that used these facilities on or before January 1, 1998, if conditions specified under Existing Law #3 (a-f) above are met and if all of the following conditions are satisfied:
  - a. The city, county, or regional agency that utilizes the City of Commerce, City of Long Beach, or Stanislaus County transformation facility continues to operate a combination of source reduction, recycling, and composting programs that achieve the 25% by 1995 diversion requirement (or reduced goals if approved by the CIWMB), if more than 10% diversion is being claimed.
  - b. The sum total of diversion credit provided by the three existing transformation facilities does not exceed the permitted capacity, as specified in the report of station information for the facility, as it existed on January 1, 1998.
  - c. If any of the three existing transformation facilities increases its permitted capacity, the amount in excess of the permitted capacity as of January 1, 1998 shall constitute disposal.
2. State that a source reduction and recycling element (SRRE) shall not be revised due solely to a decision by a city, county, or regional agency to include more than 10% diversion through transformation if the city, county, or regional agency utilizes the City of Commerce, City of Long Beach, or Stanislaus County transformation facility to comply with the 50% diversion requirement. The revision of the element shall be made at the time the element is revised and/or reviewed every five years. Any change in a diversion program shall be reported at the time the annual report for a jurisdiction is routinely submitted.

## COMMENTS

Background/Effect of Electricity Deregulation. State law and policies during the 1980s encouraged the construction of waste-to-energy plants as a method to reduce landfill disposal of solid waste. The then Solid Waste Management Board's SB 650 program provided grants for project planning or construction of the Commerce, SERRF and Stanislaus plants. The California Pollution Control Financing Authority provided construction financing for the Stanislaus waste-to-energy plant.

Similarly, the California Public Utilities Commission in response to federal and State mandates to develop renewable and non-utility owned electric generation created special contracts to provide sufficient revenues to construct waste-to-energy, biomass, wind, solar, etc plants. Under these contracts, the public utilities would buy electricity from the plants at a rate equal to the utilities' cost of generation with existing plants or not having to build new plants.

The Commerce, SERRF and Stanislaus plants signed Interim Standard Offer No. 4 contracts with Southern California Edison and Pacific Gas & Electric, respectively. These contracts provided fixed prices for the first ten years. For the Commerce and SERRF plants, Edison was willing to provide a 9 cent per kilowatt-hour floor price from 1998 to about 2018. On the other hand, the Stanislaus plant will be paid short-run avoided cost starting in late 1998 which is currently in the 2 to 3 cents per kilowatt-hour range.

The restructuring of California's electric utility industry by the CPUC and Chapter 854, Statutes of 1996 (AB 1890, Brulte) has created a lot of uncertainty as to the future levels of avoided costs. With the intent of restructuring to reduce the price of electricity in California, the general expectation is that avoided cost will remain very low for the foreseeable future. The newly opened California Power Exchange electricity hourly prices for April 3, 1998 ranged from \$1.55 to \$2.68 per kilowatt-hour.

Electricity sales contribute between 60 to 85 percent of revenues to meet operational and debt service costs. The plants' other primary revenue source is the tipping fees. For every 1 cent per kilowatt-hour decrease in the electricity prices, the tipping fee must increase by \$3 to \$5 per ton. Any increase in the tipping fee may cause the waste to be handled by other means or be disposed in landfills in other communities. AB 2531, by increasing the amount of waste that can be diverted at the plants, reduces the incentive to take waste to other waste processing facilities.

Disposal to Diversion. AB 2531 would change the current statute and CIWMB regulations related to transformation which takes place at three permitted facilities in unincorporated Stanislaus County, Long Beach, and Commerce. Under the current law, transformation is considered to be disposal for the 25% diversion requirement by 1995. However, transformation can be counted as 10% of the 50% by 2000 diversion requirement. The bill would not change current law for any new transformation facilities, but would count all transformation at the three existing facilities as 25% of the 50% by 2000 diversion requirement so long as the permitted transformation capacity of the facilities, as of January 1, 1998, is not

exceeded. The remaining 25% diversion requirement would be met by jurisdiction operated source reduction, recycling, and composting programs.

Statewide vs. Local Impact. The statewide impact on achievement of diversion requirements by changing transformation at the three facilities from disposal to diversion in 2000 and beyond is fairly minimal. Of the 44 million tons of solid waste annually generated within California, less than one million is transformed. This represents approximately 2% of the statewide generation.

Therefore under this proposal, the statewide diversion rate could only climb by 2%. However, some individual jurisdictions could have significant changes in their diversion rates. Historically, several jurisdictions have relied on transformation for nearly 100% of their disposal after diversion. With the proposed changes in AB 2531, these jurisdictions would be able to count 25% of their transformation as diversion. These jurisdictions would need to reevaluate their diversion programs and implementation schedules. Those jurisdictions that exceed 10% sent to transformation at the three facilities would be able to claim additional credit under this bill. As a result, they may not need to implement as many new programs or may be able to select other alternative diversion programs. AB 2531 allows a jurisdiction that needs extensive revision of a jurisdiction's SRRE to wait until the five-year revision. Other jurisdictions could revise their SRREs as part of the annual report process.

Many local jurisdictions use transformation facilities for a smaller portion of their waste stream. Because up to 10% of the 50% diversion required by 2000 may already come from transformation, the number of jurisdictions impacted by this statutory change would be fairly small. This is because most jurisdictions that use transformation do not send more than 10% of the solid waste generated in the jurisdiction to transformation facilities.

An Unfair Change? Jurisdictions that plan to achieve the 50% requirement by funding sometimes expensive, traditional diversion programs may feel that this reclassification of transformation is an unfair route to achievement of the 50% requirement. However, all jurisdictions started with different waste streams, had different levels of private sector diversion, had different market conditions, and have diversion rates that are affected by many factors outside their control. Different jurisdictions already need to have different levels of effort.

Reporting Requirements. AB 2531 requires reporting for the three existing facilities. Disposal reporting by the three facilities will ensure that any transformation above the 1998 levels would be counted as disposal, as required by the bill.

Regulation Changes. AB 2531 would require the revision of a few existing regulation sections dealing with determining the amounts of disposal from each jurisdiction, implementing diversion programs, measuring disposal reduction, and determining goal achievement. In the event that a jurisdiction elects to increase the percentage of transformed waste counted towards its diversion goals, it would necessitate the revision of each of these parameters.

## LEGISLATIVE HISTORY

AB 2531 was introduced on February 20, 1998. It is set to be heard by the Assembly Natural Resources Committee on April 13, 1998.

Support: Stanislaus County (sponsor)  
League of California Cities  
City of Ceres  
Gilton Solid Waste Management  
City of Modesto

Opposition: Californians Against Waste

## FISCAL AND ECONOMIC IMPACT

AB 2531 would impose costs of \$17,500 (.25 PY) in FY 1998-99 and \$17,500 (.25 PY) in FY 1999-2000 from the Integrated Waste Management Account (IWMA) to revise regulations to change the proportion of transformation at the three facilities to count as diversion, clarify transformation's role in diversion plans, and remove the 10% limit for the 50% diversion in 2000 requirement. This would require CIWMB resources in staff time, duplication costs, mailing costs, and publication costs for compliance with the California Environmental Quality Act (CEQA).

The fiscal impact on local government will be dependent on the number of jurisdictions that rely on transformation at the three facilities in 2000, the extent to which they exceed the current 10% limit, and the extent to which they need to revise their plans and programs as a result. It is most likely that few jurisdictions would need to extensively revise their SRREs as a result of this bill, so local costs should be minimal. It could also result in unknown but potentially lower diversion costs to those jurisdictions that would meet the 50% requirement based on an increase in transformation credit.



Board	Author	Bill Number
California Integrated Waste Management Board	Aroner	AB 2555
Sponsor	Related Bills	Date Amended
Californians Against Waste	SB 698 (Rainey)	As Introduced

### BILL SUMMARY

AB 2555 would mandate, by the year 2003, that producers and packagers of plastic packaging material ensure that no more than 50 percent of their plastic packaging material offered for sale in California becomes waste, no more than 35 percent by the year 2006 and no more than 20 percent by the year 2010. Additionally, the bill would require the California Integrated Waste Management Board (CIWMB), on or before July 1, 2004, and every other year thereafter, to report, as specified, to the Legislature and the Governor on the status of compliance with the provisions of this bill. The bill would make any violation of this chapter a civil penalty punishable by a fine of up to \$100,000 per violation. Further, the bill would require that funds derived from any such fine be deposited in the Integrated Waste Management Account and be available, upon appropriation by the Legislature, for specified purposes.

### BACKGROUND

Californians Against Waste (CAW) is the sponsor of AB 2555. CAW contends that California needs a law that holds manufacturers responsible for developing markets for the full range of plastics packaging that is being produced. CAW believes that AB 2555 would spur industry to support plastics recycling and to use recycled plastic in their products. AB 2555 would apply to the full range of plastic packaging, including all plastic bottles and containers, plastic food packaging, plastic bags and film wrap, and plastic fill packaging ("peanuts").

Rigid Plastic Packaging Container (RPPC) Law. Chapter 769, Statutes of 1991 (SB 235, Hart) enacted the rigid plastic packaging container (RPPC) law. The CIWMB, which has administered the RPPC program since its enactment in 1991, has adopted regulations to implement the RPPC law. The RPPC law covers a very small (less than 0.5 percent) portion of the waste stream.

Departments That May Be Affected		
California Integrated Waste Management Board		
Committee Recommendation	Committee Chair	Date
		3-26

The RPPC law exempts a large number of plastic containers based on size or type of product. The responsibility for compliance is placed on "product manufacturers."

Definition of Rigid Plastic Packaging Container (RPPC). Under the RPPC law, "rigid plastic packaging container" is defined as any plastic package having a relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, that is capable of maintaining its shape while holding other products including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in the State. Every RPPC sold in California, on average, is required to meet one of the following minimum content or reuse criteria:

- Contain at least 25 percent postconsumer material;
- Have a recycling rate of 25 percent, based on annual reports published by the CIWMB (for purposes of this subdivision polyethylene terephthalate (PETE) material shall be included in this calculation);
- Have a recycling rate of 55 percent if its primary material is PETE, based on annual reports published by the CIWMB;
- Have a recycling rate of 45 percent if it is a product-associated rigid plastic packaging container;
- Be a reusable or a refillable package;
- Be a source reduced container; OR
- Is a container containing floral preservative that is subsequently reused by the floral industry for at least two years.

CIWMB regulations exempt all fast food packaging from the RPPC law. The RPPC law was further amended by Chapter 754, Statutes of 1996 (SB 1155, Maddy) to exempt all food and cosmetic containers from the RPPC law.

As a result of the RPPC law, RPPC manufacturers, plastic manufacturers, and local governments began taking action to meet the 1995 compliance date for the minimum content, source reduction and reuse requirements of the RPPC law. RPPC manufacturers began testing and using postconsumer recycled plastic and local governments began or expanded postconsumer plastic container collection programs. According to the American Plastics Council's 1995 report to the CIWMB, plastic producers have invested more than \$1 billion since 1990 to develop technologies for recycling and reclaiming postconsumer and plastic scrap.

Manufacturer Compliance Rates. For calendar year 1995, all product manufacturers were deemed to be in compliance when the CIWMB determined the all-container rate to be within a

range of 23.3 to 25.9 percent. For calendar year 1996, the statewide all-container-recycling rate was calculated to be 23.2 percent. Compliance information for calendar year 1996 is not currently available; CIWMB staff estimates that this information will be available in September 1998.

Developing Markets for RPPC. The CIWMB has made several million dollars worth of loans to plastics recyclers through its Recycling Market Development Zone loan program. Most of the CIWMB's involvement with plastics has been to develop markets for recovered plastic materials diverted from the waste stream. To date, the CIWMB has not tracked the actual generation of plastic material by each manufacturer.

## **RELATED BILLS**

Related legislation includes SB 698 (Rainey), sponsored by First Brands, Inc. SB 698 would eliminate the current 30 percent recycled material use requirement for trash bags 0.75 mil and greater and replace it with two compliance options, as specified, from which manufacturers may choose. Additionally, the bill would: 1) delete the exemption for adhesive, heat-affixed strap bags; 2) provide that any variance issued by the CIWMB on or before the effective date of this bill would remain in effect until December 31, 1998; 3) exempt the variance holder from the requirements of the bill until that date; and 4) would require the CIWMB to conduct a survey of manufacturers subject to this proposed legislation and report to the Legislature on its findings by October 1, 2001. The CIWMB voted to support SB 698 at its March 25, 1998 CIWMB meeting. SB 698 passed the Assembly Natural Resources Committee (9-0) on March 16, 1998 and was referred to the Assembly Appropriations Committee. No hearing date has been scheduled.

## **EXISTING LAW**

### State Law:

1. Contains legislative findings that:
  - a. For recycling in the State to be successful, it is critical that stable, in-state markets be developed for recycled material; and
  - b. The State has required several types of products to use increasing levels of postconsumer recycled material in their manufacture (PRC §42300).
2. Requires every rigid plastic packing container (RPPC) sold in California, on average, to meet one of the following minimum content or reuse criteria:
  - a. Contain at least 25 percent postconsumer material;

- b. Have a recycling rate of 25 percent, based on annual reports published by the CIWMB (for purposes of this subdivision Polyethylene Terephthalate (PETE) material shall be included in this calculation;
  - c. Have a recycling rate of 55 percent if its primary material is PETE, based on annual reports published by the CIWMB;
  - d. Have a recycling rate of 45 percent if it is a product-associated rigid plastic packaging container;
  - e. Be a reusable or a refillable package;
  - f. Be a source reduced container; OR
  - g. Is a container containing floral preservative that is subsequently reused by the floral industry for at least two years (PRC §42310);
3. Exempts the following containers from the minimum content or reuse requirements:
- a. RPPCs produced in or out of the State which are destined for shipment to other destinations outside the State and which remain with the products upon that shipment;
  - b. RPPCs that contain drugs, medical devices, cosmetics, food, medical food, or infant formula as defined by the Federal Food, Drug and Cosmetic Act;
  - c. RPPCs that contain toxic or hazardous products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act; and
  - d. RPPCs that are manufactured for use in the shipment of hazardous materials and are prohibited from being manufactured with used material by Federal packaging material specifications and testing standards set forth in the Code of Federal Regulations (Title 49, Sections 178.509, 178.522, and 178.600 to 178.609, inclusive) or are subject to recommendations of the United Nations on the transport of dangerous goods (PRC §42340);
4. Requires the CIWMB to adopt implementing regulations and specifies that one of these regulations must require product manufacturers (users of containers) to include a requirement in their purchasing specifications that the rigid plastic containers they will purchase must satisfy the minimum content and reuse requirements (PRC §42325);
5. Authorizes the CIWMB, if it determines that a manufacturer has not taken all feasible actions to ensure the reduction, recycling, or reuse of the containers and the development and expansion of markets for containers, to take one of the following actions, as selected by the manufacturer:

- a. Require the manufacturer to take additional actions to ensure that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, recycling, or reuse of the containers and the development and expansion of markets for rigid plastic packaging containers, OR;
  - b. Impose a civil penalty of up to \$100,000, after taking into consideration the size and net worth of the company, the impact of the violation on the overall objectives of the rigid plastic packaging law, and the severity of the violation (PRC §42310.2).
6. Requires the CIWMB to grant a waiver from the 25 percent postconsumer material content requirement if the CIWMB finds that:
  - a. The RPPC requirements cannot be met because of regulations adopted by the Federal Food and Drug Administration or other State or Federal law, OR;
  - b. It is technologically infeasible to use rigid plastic packaging containers, which achieve the postconsumer content requirement (PRC §42330[a];
7. Requires the CIWMB to grant a waiver from all of the recycled content, reuse, and source reduction requirements if the CIWMB finds that:
  - a. Less than 60 percent of the single-family homes in the State on and after January 1, 1994, have curbside collection programs which include beverage container recycling, OR;
  - b. At least 50 percent, by number, of a manufacturer's rigid plastic packaging containers sold or offered for sale in the State in the current calendar year achieve the postconsumer material requirements and all of the manufacturer's rigid plastic packaging containers will comply with the recycled content, reuse, and source requirements of the RPPC program by January 1, 1996 [PRC §42330(b)]; and
8. Requires the CIWMB to grant a one-year waiver from the RPPC program for products packaged in rigid plastic packaging containers that are introduced and sold in this State after January 1, 1995 [PRC §42330 (c)].

State Regulations (Code of California Regulations, Title 14, Article 3, §17942 through §17949):

1. Provide guidance to those who must comply with RPPC program requirements;
2. Describe procedures that product manufacturers, container manufacturers, resin manufacturers, distributors, and importers must follow to meet reporting, certification, and documentation requirements; and

3. Pertain only to RPPC sold or offered for sale in California, regardless of where the containers or the products they hold are produced.

## ANALYSIS

### AB 2555 would:

1. Mandate, by the year 2003, that producers and packagers of plastic packaging material ensure that no more than 50 percent of their plastic packaging material offered for sale in California becomes waste, 65 percent by the year 2006 and 80 percent by the year 2010;
2. Make a person who violates the mandate in #1 above subject to a civil penalty not to exceed \$100,000;
3. Require the CIWMB to report to the Legislature and the Governor, on or before July 1, 2004, and every other year thereafter, on the:
  - a. Status of compliance with #1 above;
  - b. Estimated amount of each plastic packaging material type that was generated and that become waste during the preceding calendar year;
  - c. Largest producers and packagers of plastic packaging materials types that have satisfied the goals of AB 2555;
  - d. Largest producers and packagers of plastic packaging material types that have failed to satisfy the goals of AB 2555;
  - e. Estimate of the total annual public cost of waste cleanup, collection, and disposal for each plastic packaging material type that has failed to satisfy the goals of AB 2555; and
  - f. Recommendations on additional strategies, programs and incentives that may be taken by the producers and packagers of plastic packaging material types or the Legislature to further reduce plastic packaging waste;
4. Declare legislative intent that producers and packagers of plastic packaging:
  - a. Share in the responsibility for substantially reducing, and where feasible, eliminating plastic packaging waste;
  - b. Use voluntary, market-based, and other cost effective methods to satisfy the goals of this chapter;
  - c. Make any costs associated with reducing plastic packaging waste part of the cost of each product;

- d. Reduce and ultimately eliminate the expenditure of existing tax and fee revenue to pay for the collection and disposal of plastic packaging waste;
5. Define "packager" as the maker of or distributor of products that utilize packaging;
6. Define "producer" as any person who manufactures packaging or the materials used for packaging, or who supplies packaging or materials to a product maker or packager;
7. Define "packaging" as material or materials used to protect, store, handle, transport, display, or market products, including unit packages, intermediate packages, and shipping containers;
8. Provide that packaging includes, but is not limited to, boxes, bags, crates, disposable cups and plates, pails, rigid foil, and other trays, wrappers, and wrapping films, tubs, inserts, and fillers used to cushion the contents of a package; and
9. Define "plastic packaging materials types" as distinct categories of plastic packaging as determined by the CIWMB, including, but not limited to the following.
  - a. Polyethylene Terephthalate (PET) plastic packaging;
  - b. High-density Polyethylene (HDPE) plastic packaging;
  - c. Polystyrene (PS) plastic packaging;
  - d. Polyvinyl Chloride (PVC) plastic packaging;
  - e. Polypropylene (PP) plastic packaging; and
  - f. Bags, film, wrap, and other flexible plastic packaging.

## COMMENTS

Disposal of Plastic Waste in Solid Waste Landfills. Chapter 1095, Statutes of 1989 (The California Integrated Waste Management Act of 1989, Sher, AB 939) requires local governments to reduce their waste streams by 25 percent and eventually 50 percent by the year 2000 by the development of waste diversion programs. According to the 1990 CIWMB Waste Composition Study, plastics represent 6.5 percent of California's solid waste stream and RPPC containers subject to the RPPC law are less than 1 percent of the total waste stream in California. Plastic represents about 5 percent of the total waste in solid waste landfills by weight, but it occupies about twice that amount in volume. Very little plastic waste will biodegrade in solid waste landfills. If plastic waste does biodegrade, it does so very slowly.

The primary source of collection of recyclable plastic is through curbside collection programs. Prior to the enactment of the RPPC program, curbside collection of recyclable plastics was

limited to milk and soda bottles because these materials have a higher market value than other plastic materials. The enactment of the RPPC program created a market demand for other types of recyclable plastics that provided an incentive to expand the types of recyclable plastics collected through curbside collection programs.

Recycling of Plastic Products. In November 1997, the Department of Conservation (DOC) reported that 2,809 tons of PET containers (e.g., soda bottles, etc.) were reclaimed; this represents an increase of 10 percent over 1996. Further, the DOC reported that households served by curbside collection programs continue to increase, now totaling 70 percent in California. A recent survey of the 12 largest curbside programs indicated HDPE (e.g., milk jugs, etc.) plastic recycling volumes from 1995 to 1996 increased by 23 percent.

Problems with AB 2555. As currently written, AB 2555 appears to have created several problematic areas for the RPPC law:

- Assembly Bill 2555 would not ensure a reduction in the amount of plastic packaging material becoming waste. The bill would impose a non-disposal requirement on all packaging material actually sold in California, but would not impose that requirement on all plastic packaging material used in California.
- The definition of packaging appears to be all-inclusive by including plastic materials used for transportation and handling of products prior to actual sales to consumers.
- The bill does not specify any particular method or methods that packaging producers must use to ensure those materials do not become waste. This would allow producers the right to pursue whatever options they find to be most convenient for them. The producers could establish programs such as direct "buy-back" or return systems, obtain plastic from existing curbside collection programs, work with retail sellers to get people to return the packaging material, or they could change the type of packaging materials. The producers cannot count any plastics recovered for recycling at mixed waste material recovery facilities. This material would be considered a waste under the Public Resources Code.
- The bill does not specify how the CIWMB or the producers are to determine the amount of plastic packaging material generated. The bill appears to define "generation" as the sale of packaging material in California. It begs the question of how to treat the packaging material that was sold out-of-state for packaging of products to be sold in California. The proposed PRC §42383 should be amended to clarify whether generation of plastic packaging occurs when the packaging material is sold in California, or if generation occurs where the product, which was packaged in plastic, is sold in California.
- AB 2555 could be interpreted as "the sale of packaging material within California." Therefore only materials subject to those sales transactions would be covered by waste reduction mandates. This could mean that packaging material not sold in California could become waste at a 100 percent rate.



- AB 2555 would call for the imposition of civil penalties for each violation of the law. Any penalties, which are collected, would be deposited into the Integrated Waste Management Fund. However, the bill does not provide the CIWMB with the express authority to ensure compliance by the producers and packagers. The bill assumes that the CIWMB will be able to receive from each and every producer and packager the sales and waste data for specified packaging types. The CIWMB needs these data to determine which producers and packagers satisfied the requirements of the law. The bill needs to be amended to include a provision that the CIWMB has the authority to promulgate regulations to ensure compliance by the producers and packagers with the law. Or, if the Legislature determines that this issue would best be addressed via an electronic manifest, what entity or entities would be responsible for its development and implementation?

New Required CIWMB Annual Report. AB 2555 would require the CIWMB, starting in the year 2004, to annually report to the Legislature and the Governor on the status of compliance. The report is to include a CIWMB estimation of the amount of plastic packaging material generated and the amount that became waste, a listing of producers that failed to comply, and a CIWMB estimation of the public cost of waste clean-up, collection and disposal for the non-complying packaging material types.

This report will require a significant resource commitment by the CIWMB for data acquisition and management, report writing and analysis of the costs of plastic packaging disposal. The first report will probably require two person-years (PYs) for the analysis and report preparation. The CIWMB will have to expend resources beginning in the year 2002, if not before, to draft regulations for reporting to the CIWMB on the generation and recycling of plastic packaging. The database management function would begin in the year 2003.

Supporters' Arguments. Supporters contend that boosting the rate of plastic recycling hinges on plastic manufacturers because they buy the processed material and recycle it into new products. Getting major manufacturers to develop new markets for recycled plastics will be critical to boosting the overall plastics recycling rate.

Opponents Arguments. Opponents are showing resistance to AB 2555 because it allows for stiff fines for failure to comply. AB 2555 calls for civil penalties up to \$100,000 for violations. Plastic manufacturers also object to their industry being singled out for such ambitious recycling goals. They contend that plastics manufacturers already promote recycling and those efforts have helped to boost rates in some areas. They believe that the law might force product substitutions and could increase the waste burdens in California.

## **SUGGESTED AMENDMENTS**

The LPEC may wish to consider the following amendments:

1. Assembly Bill 2555 would impose a non-disposal requirement on all packaging material actually sold in California, but would not impose that requirement on all plastic packaging

material used in California. Should the bill be amended to impose a non-disposal requirement on all packaging material sold, as well as used, in California?

2. The definition of packaging appears to be all-inclusive by including plastic materials used for transportation and handling of products prior to actual sales to consumers. Should the bill be amended to separate these types of materials?
3. The bill does not specify any particular method or methods that packaging producers must use to ensure those plastic materials do not become waste. This would allow producers the right to pursue whatever options they find to be most convenient for them. The producers could establish programs such as direct "buy-back" or return systems, obtain plastic from existing curbside collection programs, work with retail sellers to get people to return the packaging material, or they could change the type of packaging materials. The producers cannot count any plastics recovered for recycling at mixed waste material recovery facilities to ensure those plastic materials are recycled rather than disposed in solid waste landfills. This material would be a waste under the Public Resources Code. Should the bill be amended to ensure that the plastic material is recycled rather than disposed of as waste in solid waste landfills?
4. The bill does not specify how the CIWMB or the producers are to determine the amount of plastic packaging material generated. The bill appears to define "generation" as the sale of packaging material in California. It begs the question of how to treat the packaging material that was sold out-of-state for packaging of products to be sold in California. Should the proposed PRC §42383 be amended to clarify whether generation of plastic packaging occurs when the packaging material is sold in California, or where the product, which is packaged in plastic outside of California, is sold in California?
5. AB 2555 could be interpreted as "the sale of packaging material within California." Therefore only materials subject to those sales transactions would be covered by waste reduction mandates. This could mean that packaging material not sold in California could become waste at a 100 percent rate. Should the bill be amended to clarify this issue?
6. AB 2555 would call for the imposition of civil penalties for each violation of the law. Any penalties, which are collected, would be deposited into the Integrated Waste Management Fund. However, the bill does not provide the CIWMB with the express authority to ensure compliance by the producers and packagers. Should the bill be amended to include a provision that the CIWMB has the authority to promulgate regulations to ensure compliance by the producers and packagers with the law?

## LEGISLATIVE HISTORY

AB 2555 was introduced on February 23, 1998. The bill is scheduled to be heard before the Assembly Natural Resources Committee on April 13, 1998.

Support: Californians Against Waste (CAW) (sponsor)

Oppose: American Plastics Council, Inc.  
The Society of the Plastics Industry, Inc.  
Kraft Foods  
California Manufacturers Association  
The Perrier Group  
Sonoco Products  
California Chamber of Commerce  
First Brands Corporation  
California League of Food Processors  
Tenneco  
Fort James Corporation  
Mead Corporation  
Flexible Packaging Association  
Chevron Chemical  
Dart Container Corporation  
Grocery Manufacturers of America  
American Electronics Association  
Soap and Detergent Association  
The Cosmetic, Toiletry and Fragrance Association  
National Food Processors Association  
American National Can Company  
W.R. Grace and Co./Cryovac Division  
Illinois Tool Works, Inc.  
Coors Brewing Company  
Dairy Institute of California  
Superfos Packaging Inc.  
Astrofoam Molding Co., Inc  
The Clorox Company  
California Bottling Co., Inc.  
Miller Brewing Company  
ELRAP  
Snack Food Association  
American Forest and Paper Association  
Procter & Gamble  
California Retailers Association  
Anhesuer-Busch Companies, Inc.  
Amoco Corporation  
BASF Corporation  
Eastman Chemical Company  
GE Plastics  
ICI Americas, Inc.  
Montell North America, Inc.  
Quantum Chemical Company  
Solvay America, Inc  
ARCO Chemical Company

Oppose      Bayer Corporation  
(Contd.)    The Dow Chemical Company  
              Exxon Chemical Company  
              Hoechst Celanese Corporation  
              Rohm and Hass Company  
              Union Carbide Corporation  
              Ashland Chemical Company  
              The BF Goodrich Company  
              Dupont  
              FINA, Inc  
              Huntsman Corporation  
              Mobil Chemical Company  
              Occidental Chemical Company  
              Shell Chemical Company  
              Pharmaceutical Research & Manufacturers of America  
              Pacific Packaging Systems, Inc.

### FISCAL AND ECONOMIC IMPACT

Enactment of AB 2555 would create a major fiscal impact on the CIWMB. **We estimate that it would cost \$ 664,000 and require 5.5 PY for one-time/start-up costs, and \$370,000/ 1.5 PY for on-going needs.** CIWMB program staff has identified many problem areas with this bill as currently written. New program activities requiring additional staff have been identified that include data management, regulation and report writing, cost analysis, and enforcement activities. A tracking system to gather all the required reporting information will need to be developed and maintained. Because most of the CIWMB's involvement in the past with plastics has been to develop markets for recovered plastic materials, a new program will need to be developed to track each plastic manufacturer's generation and output of waste.

It is too early to determine if civil penalties collected would support the cost to administer the new program activities. Current civil penalties in statute imposed on the operators of solid waste facilities are written to not exceed \$5,000 for each day of violation, and to not exceed a total of \$15,000 in any calendar year if compliance is not met. Assuming statutory authority would be granted to impose penalties at a maximum of \$15,000 per each violation, over 44 civil penalties would need to be cited and collected to support start-up costs alone. The universe of plastic manufacturers in California and the number that may fail to comply with the disposal requirements are unknown factors at this time. Additional costs not yet factored into this analysis include an estimate of legal staff time that will be required for each civil penalties case reviewed by the Board's legal office to assist with assessment and collection efforts this bill could generate.

Year	Position Need	Workload Description
2002	.5PY/IWMS (one -time)	Prepare regulations on generation and recycling of plastic packaging material.
2003	2.0 PY/AGPA 1.0 PY/Off Tech (one-time)	Develop reporting system to determine: 1. How much plastic is generated; 2. what amount becomes waste; 3. who failed to comply; and 4. what is cost for clean-up (non-compliance)?
2003	C&P Contract (on-going)	To assist with data acquisition, and determining waste composition.
2004	2 PY/IWMS (one-time)	Review, analyze and prepare 1 <sup>st</sup> annual report.
2004	0.5 PY/IWMS (on-going)	Review, analyze and prepare subsequent annual reports.
2004	1 PY/IWMS (ongoing)	Enforcement related activities; compliance evaluations/auditing.

\* See attachment #1 for detailed breakdown of cost estimate.

Economic Impact. Some plastic manufacturers contend that enactment of AB 2555 might force product substitution and could increase the waste burdens in California. Some manufacturers, fearing they may not be able to comply with steep recycling mandates, might switch packaging from plastic to another container, like glass, to avoid the law.

However, businesses that process recycled plastics believe that if demand is increased for recycled plastics through the enactment of AB 2555, their businesses will benefit.

As a result of the successful diversion of solid waste from California's landfills, the Integrated Waste Management Account is experiencing declining revenues due to decreased tipping fees. For this reason, less money is available to implement CIWMB programs. Enactment of this legislation could result in less funding for other vital CIWMB programs.

AB2555 one-time  
**STANDARD COMPLIMENT**  
**BCP'S FY 1998-99**

ATTACHMENT I

**DIVISION:** Waste Prevention and Market Development  
One-Time / Start-up costs

**PERSONAL SERVICES**

Salaries & Wages:		
<u>IVMS</u>	2.5 \$	<u>127,260</u>
<u>Assoc. Programmer Analyst</u>	2.0 \$	<u>104,304</u>
<u>Office Technician</u>	1.0 \$	<u>29,724</u>
	\$	
<u>Total Positions</u>	<u>5.5 \$</u>	
 Gross Salaries & Wages Subtotal	\$	<u>261,288</u>
 Salary Savings (5%)	\$	<u>-13,064</u>
 Net S & W Subtotal	\$	<u>248,224</u>
(Salaries & Wages less Salary Savings)		
 Staff Benefits (28%)	\$	<u>69,503</u>
 PERSONAL SERVICES TOTAL	\$	<u>317,726</u>

**OPERATING EXPENSE AND EQUIPMENT**

General Expense (\$1,226 per person)	1226 \$	<u>6,743</u>
Printing (\$626 per person)	626 \$	<u>3,443</u>
Communications (\$1007 per person)	1007 \$	<u>5,539</u>
Postage (\$564 per person)	564 \$	<u>3,102</u>
Travel In State (\$971 per person)	971 \$	<u>5,341</u>
Training (\$330 per person)	330 \$	<u>1,815</u>
Consulting & Prof. Svcs - Contract	\$	<u>250,000</u>
Facilities Operations (\$5,992 per person)	5992 \$	<u>32,956</u>
Data Processing (\$733 per person)	733 \$	<u>4,032</u>
Equipment EDP (\$6,050 per person) - one time co	6050 \$	<u>33,275</u>
 OPERATING EXPENSE & EQUIPMENT TOTAL	\$	<u>346,245</u>

**TOTAL PERSONAL SERVICES and OE & E**

\$ 663,971

3.39

Board	Author	Bill Number
California Integrated Waste Management Board	McPherson	SB 1924
Sponsor	Related Bills	Date Amended
National Electrical Manufacturers Association	SB 2111 (Costa and Alpert)	As Introduced February 19, 1998

### BILL SUMMARY

SB 1924 would exclude spent dry cell batteries containing zinc electrodes as specified, from regulation and associated requirements as a non-Resource Conservation and Recovery Act (RCRA) hazardous waste, as defined. This exclusion would be predicated on: 1) spent dry cell batteries being disposed of in the municipal solid waste stream; or 2) if spent dry cells are accumulated for recycling that the person would need to demonstrate that the material is potentially recyclable and at least 75 percent by weight or volume of the accumulated spent dry cell batteries containing zinc electrodes be recycled or transferred to a different site for recycling during the calendar year.

### BACKGROUND

This legislation is sponsored by the National Electrical Manufacturers Association, which desires to deem dry cell batteries (zinc electrode) as exempt from the current non-RCRA hazardous waste if these batteries are placed in the solid waste stream for disposal or accumulated for recycling, as specified.

Currently, all spent batteries are classified as non-RCRA hazardous waste in California and are equally subject to hazardous waste regulation. This is due to the fact that the State's criteria for hazardous waste are more restrictive than federal requirements.

According to the 1992 California Integrated Waste Management Board (CIWMB) report, *Household Battery Waste Management Study*, household batteries contain metals which are known to have adverse effects on human health and the environment. Historically, mercury and cadmium have been the toxic metals of primary concern in household batteries as it is estimated that household

Departments That May Be Affected California Integrated Waste Management Board, Department of Toxic Substances Control, State Water Resource Control Board, Air Resources Control Board		
Committee Recommendation	Committee Chair	Date
		3-40

batteries may contribute more than 8 percent of the total mercury found in municipal solid waste, whereas household batteries may contribute more than 50 percent of the cadmium in municipal solid waste.

Household batteries are estimated to comprise only two percent of the total zinc contributed by all other uses. The report estimates that 3,267 tons of zinc is projected for the California waste stream in the year 2000 from the disposal of household batteries versus only 3.3 tons for mercury and 466 tons for cadmium, respectively.

In addition, the 1992 California Integrated Waste Management Board (CIWMB) report, *Household Battery Waste Management Study*, projected the 1998 annual sales of household batteries in California at an estimated 609 million batteries (of which 406 million are alkaline, 66 million are zinc-carbon, and 36 million are zinc air, mercuric oxide, and silver oxide). Thus, approximately 83 percent of the household batteries sold in California contain zinc electrodes and thus would be subject to this proposed legislation.

Most consumers of household batteries are not aware of the fact that household batteries, which they discard in their garbage, are legally considered hazardous waste in California. Therefore, although household batteries are required to be disposed in a hazardous waste disposal facility, the majority of household batteries end up illegally disposed in municipal solid waste landfills thereby contributing to the actual or increased risk of contamination of soil and groundwater at municipal solid waste landfills throughout the state, or to the increased risk of air emissions at municipal solid waste incinerators.

California has pursued several options to encourage the collection of non-RCRA hazardous waste batteries, especially those generated by households, including relaxing standards for public agencies which collect household hazardous wastes and requiring local governments to plan for the safe collection and ultimate recycling, treatment or disposal of household hazardous wastes (including discarded batteries). The result has been the incorporation of household battery collection as a part of a community's household hazardous waste collection program. According to the Department of Toxic Substances Control Household Hazardous Waste Collection Facility Volume by County Report for Fiscal Year 1996/1997, approximately 148,772 pounds of household batteries were disposed of as hazardous waste.

## **RELATED BILLS**

SB 2111 (Costa and Alpert) would have an impact on statewide policies governing silver and silver compounds. Silver and silver compounds currently are considered to be non-RCRA hazardous wastes in California. This bill would exempt silver and silver compounds from regulation under the hazardous waste control laws if these materials are not subject to regulations as RCRA hazardous waste only to the extent these materials are regulated under RCRA. These materials could then legally be disposed of at permitted landfills and transformation facilities and must be included in waste disposal data provided by local jurisdictions. While silver and silver compounds alone may not significantly impact the amount of solid waste disposal at landfills or transformation facilities, other waste types are being



considered for deregulation or exemption, and as a result there may be a cumulative increase in the amount of waste being disposed of at landfills or transformation facilities throughout the State. SB 2111 was introduced in the Senate on February 20, 1998 and has been referred to the Senate Environmental Quality Committee for a hearing on April 20, 1998. The CIWMB has not heard this bill.

## EXISTING LAW

### Federal law:

1. Identifies most spent batteries as hazardous waste under RCRA;
2. Includes adoption (May 11, 1995) of the U.S. EPA's Universal Waste Rule (UWR), which was created to streamline the collection and management of certain widely generated hazardous waste by lessening the overall regulatory burden associated with those wastes. The UWR applies to hazardous wastes that are generated in a wide variety of settings in addition to the industrial settings where you would normally find hazardous waste. Once designated a "Universal Waste," the waste is no longer required to be managed by generators or transporters according to full RCRA hazardous waste requirements, but instead must meet lesser UWR requirements. Universal wastes include batteries, pesticides and mercury thermostats. Final treatment, disposal, or recycling of these wastes is still subject to applicable RCRA permit requirements.

### State law:

1. Defines "batteries" as primary or secondary batteries, including nickel-cadmium, alkaline, carbon-zinc, and other batteries generated as non-RCRA waste similar in size to those typically generated as household waste (Health and Safety Code §25216);
2. Excludes lead-acid batteries from the definition of "batteries" (Health and Safety Code §25216);
3. Exempts any collection location or intermediate collection location that receives, or any person that transports, spent batteries as exempt from the requirements of the hazardous waste control laws concerning receipt, storage, and transportation of hazardous waste if the batteries are subsequently sent from that collection location to a facility authorized to receive those batteries and specified conditions are met (Health and Safety Code §25216.1);
4. States that disposal does not include a battery, which is delivered to a collection location or an intermediate collection location and subsequently transported to a household hazardous waste collection facility (Health and Safety Code §25216.2).
5. Requires a hazardous waste facilities permit for the operation of a household hazardous waste (HHW) facility and waives that requirement for recycle-only HHW facilities that accept specified waste, including nickel-cadmium, alkaline, carbon-zinc, or other small batteries, if the recycle-only HHW facility meets specified requirements (Health and Safety Code §25218.8)

6. Defines "non-RCRA hazardous waste" as meaning hazardous waste that is regulated by the State, other than hazardous waste subject to the federal Resource Conservation and Recovery Act of 1976 (Health and Safety Code §25160.1).

## ANALYSIS

### SB 1924 would:

1. Define "spent dry cell battery containing zinc electrodes" as any type of enclosed device or sealed container consisting of one or more voltaic or galvanic cells, electrically connected to produce electric energy, including but not limited to, a button, coin, cylindrical, or rectangular shape, which is designed for commercial, industrial, medical, institutional, or household use, including any alkaline, zinc-air, zinc-carbon, or silver oxide battery which is discarded by the user, and which contain both of the following:
  - a. An electrode comprising zinc or zinc oxide or a combination thereof; or
  - b. A liquid starved or gelled electrolyte.
2. Require that a spent dry cell battery containing zinc electrodes is not subject to regulation under this chapter as a non-RCRA hazardous waste, and is not subject to the requirements of §25216.3, if the spent dry cell battery containing zinc electrodes is disposed of in the municipal solid waste stream or is accumulated for recycling.
3. Prohibit a person from accumulating spent dry cell batteries containing zinc electrodes speculatively within the meaning of "accumulated speculatively" as defined by §66260.10 of Title 22 of the California Code of Regulations.
4. Allow that a person accumulating spent dry cell batteries containing zinc electrodes is not accumulating these materials speculatively, if the person demonstrates that the material is potentially recyclable, has a feasible means of being recycled, and that during the calendar year, the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period.

## COMMENTS

Health and Safety and the Environment. The CIWMB does not regulate hazardous waste. The Department of Toxic Substances Control (DTSC) would have to determine if declassifying these types of batteries is beneficial to the people and environment of California. In addition, DTSC and the State Water Resource Control Board (SWRCB) determine what wastes can be disposed in the various classes of landfills based on the risks associated with the waste and the containment provided by the landfill. Not all municipal solid waste landfills are alike, some have liners and some don't thus, the SWRCB would need to evaluate whether all landfills in California could accept the spent dry cell batteries if they were declassified. Further, because the Air Resource Board (ARB) regulates air emissions it would need to determine whether the declassification of household batteries would result in more batteries being incinerated in transformation facilities and the impact

this change could make on transformation facility air emissions. We would note that the CIWMB regulates solid waste facilities and does not determine which wastes can be accepted.

Impact on CIWMB Household Hazardous Waste Program. The CIWMB manages spent household batteries as part of its household hazardous waste (HHW) program. If passed, this law would remove certain types of batteries from being classified as hazardous, thus removing them from inclusion in local HHW collection programs. These batteries could then legally be disposed at a landfill or transformation facility and must then be included in the waste disposal data provided by local jurisdictions to the CIWMB.

A few businesses are currently recycling spent household batteries. While the sponsors of this bill indicate that one of the objectives is to encourage the recycling of the spent dry cell (zinc electrode) batteries, it is not apparent at this time what incentives this bill offers to encourage such recycling.

Meeting the 50 percent Diversion Goal by the Year 2000. The DTSC is currently analyzing possible changes in its Waste Classification codes, which may result in many, heretofore, "hazardous" waste types being de-classified to non-hazardous (solid) waste, and therefore, allowed to be legally disposed in California landfills. The declassification of numerous hazardous wastes types could result in a cumulative increase in the amount of formerly hazardous waste entering municipal solid waste landfills which, in turn, local governments would need to address in planning to meet their mandated 50 percent diversion goal by the year 2000.

Declassification of Spent Dry Cells (Zinc Electrode) and Diversion Credit. It appears that this bill proposes to declassify dry cell (zinc electrode) batteries from hazardous to non-hazardous waste such that these batteries could be legally disposed in all municipal solid waste landfills and transformation facilities. Currently, such batteries are considered household hazardous waste (HHW), and no diversion credit is given for their diversion in the base-year.

Chapter 1292, Statutes of 1992 (AB 2494, Sher) changed the diversion rate measurement system established by Chapter 1095, Statutes of 1989 (AB 939, Sher) from a generation-based to a disposal-based system. Therefore, jurisdictions only need to measure diversion of any waste type in their base-year and not in any subsequent years.

Residential household hazardous waste (HHW) (as a waste type) is counted toward disposal, so some batteries may have been included in a jurisdiction's base-year disposal amount. However, dry cell batteries are not listed as a separate waste type in the CIWMB's regulations, so it is not possible to determine a separate base-year disposal tonnage for this waste. Non-residential HHW, however, is considered to be a hazardous waste, and is not counted toward jurisdiction's base-year disposal.

Since the CIWMB does not have authority over hazardous waste, jurisdictions were not required to measure or report hazardous waste disposal tonnage in their base-year waste studies. Thus, unless a jurisdiction was tracking the disposal amounts of a specific hazardous waste, it would be nearly impossible to determine base-year disposal tonnage for any specific hazardous waste for a specific jurisdiction. However, it is current CIWMB policy that any solid waste that was "missed" from a jurisdiction's base-year waste generation study can be added into their disposal or diversion, and generation tonnage, if the jurisdiction can provide a reasonable estimate of the quantity of the solid waste.

Apparent Declassification from non-RCRA Hazardous Waste to Solid Waste. While it appears that this bill proposes to declassify dry cell (zinc electrode) batteries from non-RCRA hazardous to non-hazardous (solid) waste, the bill doesn't directly state this declassification. Rather than declassify the entire zinc electrode containing dry cell category based on the nature of the waste, which would be the straightforward, easy to understand, and likely enforceable way to handle this waste, the bill appears to be granting a variance for a whole classification of non-RCRA hazardous waste based on either a "location" or "storage management" method this waste would be subject to. Overall, the "location" or "storage management" approaches are confusing and raise numerous questions as to when a spent dry cell battery (zinc containing) is a hazardous waste and when it becomes or is a solid waste. In the first case, the location terms "municipal solid waste stream" which are not defined in statute or regulation, are confusing and may be interpreted differently by the regulated community, as well as the general public. For example, is a spent dry cell disposed of in the "municipal waste stream" when it is tossed out of a car window? when it is placed into a garbage can in a home?; when it is tossed into a river?; when placed in the landfill?; or when combusted in a transformation facility? If the intent of the bill is to state that a spent dry cell battery (zinc electrode) that is disposed of through landfill disposal or transformation at a permitted solid waste facility is solid (non-hazardous) waste, the bill should be amended to directly state this.

In the second case, the "storage management" or accumulation of spent dry cell batteries (zinc electrode) not being regulated as a non-RCRA hazardous waste would be allowed is if it can be shown that these batteries have a potential to be recycled, a means of being recycled and that at least 75 percent by weight or volume of the accumulated spent dry cell batteries are recycled or transferred to a different site for recycling during the calendar year. Once again it is not clear exactly when these batteries switch from being a non-RCRA hazardous waste to a solid (non-hazardous) waste and which agency will have regulatory authority over these wastes. Does the Department of Toxic Substances Control regulate them until they arrive at the "accumulation area"? Are they non-hazardous solid wastes from the beginning at the time of accumulation and now regulated as non-hazardous solid waste during storage? What agency will have enforcement authority if the batteries are not accumulated, stored, or recycled properly and become a problem? The bill does not identify any specific management standards for spent dry cell (zinc electrode) which should be considered to protect health, safety and the environment.

DTSC and the Universal Waste Rule. It appears that this bill, as proposed, runs counter to the management of batteries under the Universal Waste Rule and perhaps the direction that the DTSC is proposing for battery management in California. Federal law requires that all batteries that are hazardous wastes are subject to the Universal Waste Rule standards in 40 CFR Part 273. Currently, the categories of batteries that are regulated include nickel-cadmium, small sealed lead-acid, mercury containing and other rechargeable batteries. While spent dry cell batteries (zinc types) are currently not regulated under this standard by the federal government, it is the CIWMB's understanding that DTSC is preparing a regulations package that would require all (including zinc containing) batteries (except automotive lead-acid batteries) to be managed in accordance with the federal Universal Waste Rule regulations.

## LEGISLATIVE HISTORY

SB 1924 was introduced on February 19, 1998 and was referred to the Senate Environmental Quality Committee for policy committee assignment. A hearing on this bill has been scheduled for April 20, 1998. 3-45

Support: National Electrical Manufacturers Association

Oppose: None at this time.

### **FISCAL AND ECONOMIC IMPACT**

SB 1924 would have no direct fiscal impact on the CIWMB or its programs. The declassification of the spent dry cell battery (zinc containing) from a non-RCRA hazardous waste to a solid waste for specific purposes would allow local governments operating HHW collection programs that accept these batteries the option of disposing of these batteries as solid waste. This would likely be a cost savings in most jurisdictions as the cost of landfilling spent batteries (zinc containing) as solid waste is usually less than the cost of recycling, landfilling or incinerating these batteries as hazardous waste. However local governments would need to weigh the cost of their current disposal methods against other considerations such as the placement of these wastes in unlined landfills and potential future pollution as well as the environmental message that is delivered to the community. In addition, local governments will need to address the fact that the increase in disposal tonnage from this waste type into the landfill will need to be off-set by the addition or expansion of a diversion program for a different waste category in order for the jurisdiction to progress towards meeting it's 50% diversion goal. The declassification of this waste type would also result in decreased revenues for hazardous waste businesses.

